IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL (L) NO.11677 OF 2007

Kailas Vasantrao Ghule & Anr. ...Appellants
V/s.
The State of Maharashtra, .
Thru' Department of Co-operation, .
Mantralaya, Mumbai, & Ors. ...Respondents

Mr.P.I. Bhujbal, Advocate, for the Appellant. .
Mr.R.M. Patne, AGP, for Respondent Nos.1 to 3. .
None for Respondent No.4. .
Mr.A.S. Desai, Advocate, for Respondent No.5.

CORAM : J.N. PATEL &
A.A. SAYED, JJ.

DATE : 25TH JUNE, 2007.

P.C. :

1. Not on Board. Mentioned. Taken on Board. Heard. This Letters Patent Appeal has been filed impugning the decision of the learned Single Judge of this Court delivered during vacation i.e. on 14th May, 2007.

2. The subject matter pertains to the ensuing elections of the Nasik District Central Co-operative Bank. It is contended by the learned Counsel for the Appellants that the main issue which requires consideration by this Court is whether two Societies can send a common nominee as a representative to cast a vote for the post of Member of the District Central Co-operative Bank. This issue was raised before the

Collector, Nasik, who by his order dtd. 07.04.2007 passed in Election Objection No.84/2007 and No.85/2007 rejected the said objection. When the matter was challenged before the learned Single Judge of this Court, the learned Single Judge held that the Petitioner has a remedy to raise the issue in the election dispute after the elections are over. Probably relying on the decision of the Supreme Court rendered in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. V/s. State of Maharashtra & Ors. [2002 (1) Mh.L.J. 659] wherein it has upheld the consistent view taken by this High Court that preparation of voter's list is an integral process of election and the Court would not interfere at that stage.

3. The learned Counsel for the Appellants submitted that Supreme Court in a subsequent case i.e. Pundlik V/s. State of Maharashtra and Ors. [CDJ 2005 SC 622] has made an exception to the settled principle when it interfered with the process of election on account of substituting a delegate of the society which was necessitated as the society effected change of its representative which was permissible under the rules and, therefore, the learned Single Judge of this Court ought to have considered the issue raised by the Appellant.

4. It is contended by the learned Counsel for the Appellants that two Societies cannot nominate or elect a common representative as the same is barred and there can be only one officer who can be elected to represent a society. Further a member’s voting power is restricted to cast only one vote in the affairs of the society and Section 73-A of the Maharashtra Co-operative Societies Act, 1960, (hereinafter referred to as "the Societies Act"), clearly provides for disqualification for being designated officer simultaneously of certain categories of societies or for being designated officer of the same society for more than 10 years. It is, therefore, submitted that as Rule 42-A of the Maharashtra Specified Co-operative Societies Elections to Committees Rules (hereinafter referred to as "the said Rules") provides that every constituency shall be a single member constituency and no voter shall have more than one vote for election of a member from the constituency in which he is registered, the Collector ought to have upheld the objections raised by the Appellant in respect of Respondent No.5.

5. The learned Counsel appearing for Respondent No.5 submits that there is no bar under the said rules nominating / electing one representative by two

societies who is otherwise eligible to be nominated as representative of two different societies to cast vote in the election to the committee of the District Central Co-operative Bank for the purpose of election of any member or members of the Committee and, therefore, the contention raised by the learned Counsel for the Appellant was rightly rejected by the Collector, Nasik.

6. We are informed that the elections are going to be held in September, 2007. In our view it will not be proper on the part of this Court to interfere with the view taken by the learned Single Judge and in any case the Appellant is not left without a remedy and can always take this issue as a ground in case he chooses to challenge the election of the members of the Committee of the District Central Co-operative Bank. The authority on which reliance is placed by the learned Counsel for the Appellant that the decision rendered by the Supreme Court in Pundalik's case does not necessarily mean that in each and every case the Court should intercept the process of election as an exception to the general rule which has been settled in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. V/s. State of Maharashtra & Ors.

7. We do not find that this is a fit case where

this Court should interfere in the process of election, as prima-facie this Court does not find any substance in the contention of the learned Counsel for the Appellant that Section 73-A of the Societies Act debars officers from being a designated officer simultaneously of certain categories of societies as the definition of officer provided in sub-section 2 of section 2 of the Societies Act does not include a representative elected by the society to represent it on another institution. Therefore, the Letters Patent Appeal stands dismissed with liberty to the Appellant to raise the issue if he chooses to file an Election Petition.

8. In so far as of other issues and contentions raised by the representatives of other societies are concerned, they can be raised and adjudicated in an Election Petition.

[J.N. PATEL, J.]

[A.A. SAYED, J.]